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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,743	01/23/2002	Paul Miller	S63.2-9964	7373
490	7590	07/22/2005	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			MIGGINS, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/055,743

Applicant(s)

MILLER ET AL.

Examiner

Michael C. Miggins

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-26 is/are pending in the application.
- 4a) Of the above claim(s) 14-22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 is/are allowed.
- 6) ☒ Claim(s) 1, 5-13 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1 and 5-26 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### **WITHDRAWN REJECTIONS**

1. All prior art and 112 rejections previously of record have been withdrawn. All of the double patenting rejections set forth in the non-final rejection of 12/28/04 have been withdrawn since applicant has filed a terminal disclaimer.

#### **REJECTIONS REPEATED**

2. There are no rejections repeated.

#### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 5-13, 23-26 have been considered but are moot in view of the new ground(s) of rejection.

#### **NEW REJECTIONS**

##### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5-13 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samuelson et al. (US 6165166) in view of Kotliar et al. (US 4886689).

Claims 1 and 23 contain method limitations "powder coated tie layers" which do not structurally further limit the product claims thus the prior art need not teach powder coated tie layers to read on applicant's claims as written since method limitations are not germane to the patentability of product claims (MPEP 2113).

Samuelson et al. disclose medical tubing having outer, core and intermediate tie layers (abstract). The tubing is used in catheters (col. 8, lines 60-65 and col. 10, lines 4-56). The outer layer is polyester or polyamide (col. 6, lines 6-23). The core layer is polyethylene (col. 6, lines 38-54). The tie layer is made of a material that is capable of adhering outer layer to the core layer to resist delamination (col. 6, lines 55-63).

Polyethylene is a well-known polyolefin.

Its outer layer surrounds, and therefore overlaps, its core layer (Fig. 1).

Samuelson does not disclose blended tie layers which blends contain polymers which are melt processible and wherein the blend contains a first polymer which is compatible with a first surface material and a second polymer which is compatible with a second surface material.

Kotliar et al. disclose blended tie layers which blends contain polymers which are melt processible and wherein the blend contains a first polymer which is compatible with a first surface material and a second polymer which is compatible with a second surface material (abstract, column 2, line 29 through column 3, line 50 and column 5, lines 39-59) for use in tubing (column 1, lines 16-29) for the purpose of providing improved adhesion between non-compatible layers.

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Therefore it would have been obvious to of ordinary skill in the art at the time applicant's invention was made to have provided blended tie layers which blends contain polymers which are melt processible and wherein the blend contains a first polymer which is compatible with a first surface material and a second polymer which is compatible with a second surface material in the medical tubing of Samuelson in order to provide improved adhesion between non-compatible layers as taught or suggested by Kotliar.

The selection of polymer blends whose components are compatible with the outer and core layers of Samuelson is an obvious matter of engineering choice, depending upon the delamination resistance desired absent a showing of unexpected results.

In the absence of convincing objective evidence to the contrary, the production of catheters using butt or lap joints is deemed a matter of engineering choice, depending upon the sections of the catheters to be bonded.

#### ***Allowable Subject Matter***

6. Claim 26 is allowed because the prior art fails to teach or suggest the features of claim 26.

#### ***Conclusion***

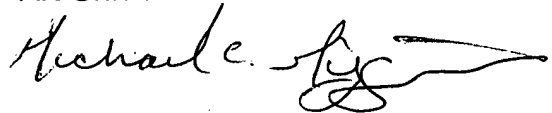
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins  
Primary Examiner  
Art Unit 1772

A handwritten signature in black ink, appearing to read "Michael C. Miggins", with a long horizontal flourish extending to the right.

MCM  
July 19, 2005